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SERVICE DATE – LATE RELEASE JUNE 6, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36187

PASSAIC STREET PROPERTIES, LLC—ACQUISITION AND OPERATION  
EXEMPTION—NEW YORK & GREENWOOD LAKE RAILWAY

MOTION FOR PROTECTIVE ORDER

Decided: June 6, 2018

By motion filed on May 10, 2018, New York & Greenwood Lake Railway, Inc. (NYGL), seeks a protective order pursuant to 49 C.F.R. § 1104.14(b) to protect the confidential and commercially sensitive information contained in unredacted documents regarding traffic flows and rate requests, submitted under seal accompanying a petition to reject the verified notice of exemption in this proceeding.

NYGL failed to submit redacted versions of the documents that it submitted under seal, as required by the Board. See 49 C.F.R. § 1104.14(a). Rather, NYGL provided a public version of its petition with those documents missing altogether. Because all parties must simultaneously file a public version of any confidential submission filed with the Board, NYGL is directed to submit public versions of the documents by June 12, 2018.

Good cause exists to grant the motion for protective order. NYGL states that the documents “contain commercially sensitive information[,] the public release of which could cause competitive or other injury to NYGL, its customers, and other railroads.” (NYGL Mot. for Protective Order 1.)

The motion conforms with the Board’s rules at 49 C.F.R. § 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for a protective order will be granted and the documents will be made subject to the Protective Order and the Undertaking.

It is ordered:

1. The motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. NYGL is directed to file public versions of the documents by June 12, 2018.
3. The unredacted documents submitted in Docket No. FD 36187 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**APPENDIX**  
**PROTECTIVE ORDER**

1. For the purposes of this Protective Order, “Confidential Information” means the traffic information filed under seal on May 10, 2018, in FD 36187.

2. Confidential Information shall be provided to any party (defined as New York & Greenwood Lake Railway, Inc., and Passaic Street Properties, LLC) only pursuant to this Protective Order and only upon execution and delivery to the parties of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of the parties or an order of the Board and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on the parties, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 C.F.R. § 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

**UNDERTAKING**

I, \_\_\_\_\_, have read the Protective Order governing the production and use of Confidential Information in FD 36187, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in FD 36187 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that the parties shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_